



# City of Marietta

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

## Motion Signature

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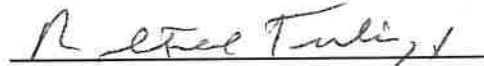
File Number: 20210590


### Code Amendment - Civil Service Rules and Regulations

Motion to approve an ordinance amending Chapter 4-8 of the Municipal Code of Marietta related to Civil Service Rules and Regulations as requested by the Civil Service Board.

### *Second Reading*

Date April 13, 2022

  
R. Steve Tumlin, Jr., Mayor

  
Stephanie Guy, City Clerk

**AN ORDINANCE**

**Amending Chapter 4-8 of the Municipal Code of Marietta (Civil Service Rules and Regulations).**

**NOW THEREFORE, THE COUNCIL OF THE CITY OF MARIETTA HEREBY ORDAINS:**

Section 1: The Municipal Code of Marietta, Chapter 4-8 (Civil Service Rules and Regulations), shall be amended as follows:

**4-8-010 - Definitions.**

- A. "Adverse Action" is an action taken by the Department that results in monetary loss due to disciplinary suspension without pay, disciplinary demotion, or disciplinary dismissal as provided in Article 4-4-20 of the Personnel Rules and Regulations.
- B. "Appeal" and "Grievance," including all derivative terms, are used interchangeably for purposes of this Chapter.
- C. "Appeal Hearing" shall refer to the meeting of the Civil Service Board at which the evidentiary hearing is conducted on the Civil Service Employee's Appeal from the Adverse Action.
- D. "Appellant" shall refer to the Civil Service Employee filing and pursuing the Appeal under this Chapter.
- E. "Chief" shall mean the Chief of the Marietta Police Department and the Chief of the Marietta Fire Department, as appropriate, and includes any member of the Department serving in an acting or interim capacity as Chief or designated to act on the Chief's behalf for purposes of this Chapter. A member of either Department serving in such an acting or interim capacity shall be subject to removal from such capacity with or without cause, with or without notice, and without the right to grieve or appeal such removal; provided, however, that a Civil Service Employee serving in such a capacity shall not otherwise lose his/her status as a Civil Service Employee.
- F. "Civil Service Employees" shall mean all certified firefighters, as defined in Georgia state law, of the Fire Department below the rank of deputy chief who have successfully completed an initial work test period and all certified peace officers, as defined in Georgia state law, of the Police Department below the rank of deputy chief who have successfully completed an initial work test period.

- G. "Clerk of the Civil Service Board" shall be the City Clerk or an employee of the City Clerk's Office designated by the City Clerk to serve as Clerk of the Civil Service Board as provided in Section 4.14 of the Charter.
- H. "Department" shall mean the Marietta Police Department and the Marietta Fire Department, as appropriate.
- I. "Workdays" shall mean Mondays through Fridays, excluding Saturdays, Sundays, and observed holidays as set forth in Section 4-4-16-030, regardless of the Civil Service Employee's own work schedule, while "Calendar Days" shall mean all days. If any deadline under this Chapter falls on a Saturday, Sunday, or observed holiday, then said deadline shall extend to the immediately following workday.

#### **4-8-020 - Causes for Appeal; Non-Grievable Actions.**

- A. The following Adverse Actions may be cause for the filing of an Appeal by Civil Service Employee of the Department and, upon request by the Civil Service Employee, would require a formal hearing before the Civil Service Board:
  - 1. Dismissal as provided in Section 4-4-8-050 of the Personnel Rules and Regulations.
  - 2. Demotion as provided in Section 4-4-20-030D(5) of the Personnel Rules and Regulations.
  - 3. Suspension without pay in excess of ten days (112 hours for firefighters) as provided in Section 4-4-20-030D(3) of the Personnel Rules and Regulations.
  - 4. Involuntary retirement; provided, however, that a retirement while under investigation, in lieu of disciplinary action, or in lieu of signing a "last chance" agreement shall not be considered "involuntary."
- B. Notwithstanding the foregoing, non-grievable actions shall include, but not necessarily be limited to, the following:
  - 1. Oral and written reprimands, suspensions without pay of ten days or less (112 hours or less for firefighters), and administrative leave with pay.
  - 2. Informal discipline or corrective action (e.g., counselings, warnings, training, etc.).
  - 3. Referrals to an Employee Assistance Program (EAP) and/or being required to sign a "last chance" agreement.
  - 4. Layoffs, furloughs, demotions, transfers, reduced work hours, position reclassifications, or other changes to a Civil Service Employee's terms and conditions of employment due to reduction-in-force, restructuring, reorganization, lack of work, or economic, budgetary, or similar considerations.
  - 5. Resignations (including resignations while under investigation, in lieu of disciplinary action, or in lieu of signing a "last chance" agreement).

6. Resignations via job abandonment as provided in Section 4-4-8-040 (unless the appeal relates to a determination by the chief or his/her designee that the Civil Service Employee lacked a valid reason for failing to report for work).
7. Any matter relating to the City/BLW's Pay and Classification Plan (including payroll deductions or withholdings, other than as resulting from suspensions without pay as provided in Section 4-8-020(A)(3) or fines of a disciplinary nature).
8. Performance reviews.
9. Non-approval of or withdrawal of approval previously granted for outside employment.
10. Changes to duties, responsibilities, assignments, shifts, and work schedules or setting of compensation, including pay increases, premium pay, overtime, and compensatory time, except in the case of disciplinary demotion.
11. Non-approval of or withdrawal of approval previously granted for the use of accrued leave, including annual leave and compensatory time, or any other employee benefit, including take-home vehicles.
12. Ordinances, resolutions, budgets, executive orders, or any other action taken by the Mayor and/or City Council or which are otherwise not within the jurisdiction or control of the City Manager or the Department.
13. Failure to promote.
14. Safety and security measures.
15. Temporary or short-term changes to the Employee's terms and conditions of employment due to emergency or other exigent circumstances.
16. Removal from a position held on an acting or interim basis.

#### **4-8-030 - Grievance Procedure.**

- A. A Civil Service Employee with a grievance that is of such a serious nature that it cannot be handled on the department level, shall file it in the form of a written appeal with the Office of the Clerk of the Civil Service Board within seven (7) calendar days, measured from the earlier of the following events:
  1. the Civil Service Employee's receipt of official notification of the action upon which the appeal is based, or
  2. the effective date of the action.
- B. Within two (2) workdays of receipt of a written appeal, the Clerk of the Civil Service Board shall provide copies of the written appeal and any supporting documentation to the Civil

Service Board, to the Attorney for the Civil Service Board, and to the Chief of the Department.

1. The Civil Service Board will meet for purposes of determining whether the Appeal presents a grievable action within fourteen (14) calendar days of its receipt of the appeal from the Clerk; provided, however, that the Chairperson may extend this deadline by up to an additional seven (7) days if necessary to accommodate the schedules of a quorum of the members of the Civil Service Board, the parties, and counsel for the parties.
  2. No formal hearing shall be held at this meeting; however, the Civil Service Employee and the Chief of the Department (or his/her designee), either directly or through their legal representatives, may appear and present argument and/or evidence in support of their respective positions during the meeting.
  3. The Civil Service Board may close the meeting and enter executive session only for purposes of discussing and deliberating on the determination. The Board's vote on the determination shall be in open session, and the decision of the Board shall be final.
  4. The Clerk of the Civil Service Board shall ensure that the meeting is conducted in accordance with the requirements of the Georgia Open Meetings Act, including those pertaining to notice, agenda, and minutes.
- C. If the Appeal is determined to present a grievable action at the meeting held in accordance with Subsection B above, the Civil Service Board shall make a reasonable effort to set the date, time, and place of the Appeal Hearing prior to adjourning the meeting; otherwise, within seven (7) calendar days of the meeting, the Clerk of the Civil Service Board, in consultation with the Board, the Attorney for the Board, the Chief of the Department and his/her legal representative, and the Appellant (or his/her legal representative), shall set a date, time, and place for the Appeal Hearing.
1. Unless otherwise agreed, in writing, by the Appellant and the Department, the hearing will be held no sooner than thirty (30) calendar days from the date of the determination of appealability.
  2. The Appeal Hearing will be scheduled such that the Civil Service Board can complete the entire appellate process within sixty (60) calendar days of the date of the determination of appealability; provided, however, that due consideration will be given to ensuring that both the Appellant and the Department are afforded a full and fair opportunity to prepare for the hearing, including arranging for the attendance of key witnesses and for representation by their counsel of choice. If deemed necessary in light of these or similarly important considerations, the Board may extend this deadline by up to an additional thirty (30) days.
- D. Notwithstanding the foregoing, non-compliance with any deadline set forth in Subsections B or C shall have no effect on the Adverse Action under appeal or compromise the Department's right to present evidence and argument in support of the Adverse Action or to otherwise oppose the Civil Service Employee's Appeal.

#### 4-8-035 – Pre-Hearing Procedure.

- A. To facilitate an efficient and orderly evidentiary hearing on the Appeal, the Chairperson may schedule a meeting of the Civil Service Board to precede the Appeal Hearing and serve as a pre-hearing conference for addressing any evidentiary, procedural, logistical, or other issues deemed advisable to resolve in advance of the hearing. Any party aware of such an issue or potential issue is encouraged to promptly notify, in writing, the other party and the Clerk of the Civil Service Board of same so that timely consideration can be given to whether a pre-hearing conference would be beneficial.
- B. The Chairperson may schedule a pre-hearing conference on his/her own motion, upon the request of any party, or upon the request of any member of the Civil Service Board. The Clerk of the Board shall ensure that any pre-hearing conference held pursuant to this Section is conducted in accordance with the requirements of the Georgia Open Meetings Act, including those pertaining to notice, agenda, and minutes.
- C. No later than seven (7) calendar days prior to the pre-hearing conference or, if no pre-hearing conference is scheduled, no later than seven (7) calendar days prior to the Appeal Hearing, the parties shall identify and produce to each other and to the Clerk of the Civil Service Board, copies of all exhibits they will or may introduce, together with a written witness list of any person(s) they will or may call, and identify, in writing, any other evidence they will or may present at the Appeal Hearing.
  - 1. Absent good cause, no witness may testify and no exhibit or other evidence may be introduced at the Appeal Hearing, unless timely identified/produced as provided herein.
  - 2. No later than three (3) calendar days prior to the pre-hearing conference or, if no pre-hearing conference is scheduled, no later than three (3) calendar days prior to the Appeal Hearing, the parties shall submit in writing, to each other and to the Clerk, any objections they may have to any witnesses, exhibits, or other evidence identified/produced as provided herein.
- D. To facilitate the availability of a witness(es), the Chairperson, upon the written request of any party made no later than the time witnesses are identified as provided in subsection C and subject to the resolution of any objection(s) as provided in subsection C(2), will sign and issue a Notice of Civil Service Board Hearing and Request for Appearance of Witness form(s), requesting the presence of a witness(es) at the Appeal Hearing.
  - 1. The requesting party shall be responsible for delivery of the form(s) to the witness(es) and for any other steps necessary to secure his/her/their attendance at the Appeal Hearing (including providing notice of any continuance).
  - 2. Except as provided above, neither the Chairperson nor any other member of the Civil Service Board shall become involved in any effort on the part of a party to compel, secure, or otherwise arrange the attendance of a witness.
- E. Both the Appellant and the Department may be represented by legal counsel at their own expense; however, all attorneys should provide notice of their involvement in the Appeal

to the other party and to the Clerk of the Civil Service Board within twenty-four (24) hours of being retained.

#### **4-8-040 - Hearing Procedure.**

The following procedures shall prevail at the Appeal Hearing before the Civil Service Board, and the proceedings shall be as informal as is compatible with justice:

- A. The Clerk of the Civil Service Board shall ensure that the hearing is conducted in accordance with the requirements of the Georgia Open Meetings Act, including those pertaining to notice, agenda, and minutes. Once the record is closed by the Chairperson as provided below, the Board may convene an executive session for purposes of conducting its deliberations on the Appeal but may receive no additional evidence or argument while in executive session.
- B. The Clerk of the Civil Service Board shall make all necessary arrangements for the Appeal Hearing to be taken down/recorded by a duly licensed/certified court reporter. If so directed by the Chairperson or by majority vote of the Civil Service Board, a court reporter may similarly be retained for any other meeting of or other proceedings before the Board. In no event, however, will the court reporter (1) prepare a transcript of any such hearing, meeting or other proceedings unless expressly directed by the Chairperson or by majority vote of the Board or (2) attend or otherwise record or transcribe any properly closed meeting of the Civil Service Board, including, but not limited to, the Board's post-hearing deliberations.
- C. The Civil Service Board retains the sole discretion whether to require or allow opening statements and/or closing arguments at the Appeal Hearing, including whether to require or allow post-hearing briefs and/or proposed findings and conclusions in lieu of or in addition to closing arguments. The Board also retains the sole discretion to set reasonable time limits on opening statements (if any), closing arguments (if any), witness testimony, and the overall presentation of each party's case. In exercising its discretion in this regard, the Board will give due consideration to providing the parties with fair and reasonable opportunities to present their respective cases.
- D. The order of proof during the Appeal Hearing shall be as follows:
  - 1. The Department bears the burden of proof at the hearing and, as such, shall first present its evidence in support of the action from which the Appeal is taken.
  - 2. The Appellant shall then present evidence in support of his/her Appeal.
  - 3. The parties may present, examine, and cross-examine witnesses and support their respective positions through the submission of pertinent documents and other evidence. In addition, the Civil Service Board may interrogate both parties and all witnesses to obtain information it deems relevant to resolution of the Appeal.
  - 4. The Board will allow each party to present pertinent rebuttal evidence.
- E. All witnesses presenting testimony at the Appeal Hearing shall do so under oath or affirmation. The Attorney for the Civil Service Board or any member of the Board is

authorized to swear witnesses and administer oaths in any matter coming before the Board substantially as follows: "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?"

F. During the Appeal Hearing, the Attorney for the Civil Service Board shall be responsible for making preliminary evidentiary rulings, including rulings regarding admissibility and such issues as the scope, relevance, or duration of witness testimony.

1. The Attorney for the Civil Service Board may issue preliminary evidentiary rulings on his/her own initiative or in response to an objection, request, or motion by a party or by any member of the Board and may make reasonable inquiries or request offers of proof to facilitate his/her rulings.
2. Evidence, including witness testimony, may be excluded on the grounds that it is irrelevant, cumulative, unduly prejudicial in comparison to its evidentiary value, inherently unreliable, or otherwise inappropriate in light of the purpose of the Appeal Hearing.
3. Any member of the Civil Service Board may request further discussion of a preliminary evidentiary ruling made by the Attorney for the Board and any such ruling may be modified or reversed by majority vote of the Board.
4. Strict adherence to formal rules of evidence shall not be required; instead, evidentiary rulings will be based on a flexible, non-technical application of general evidentiary rules and principles, with primary emphasis placed on the reliability and relevance of the proffered evidence to the issues in the Appeal.

G. After the Department and the Appellant have rested their cases (or have had a full and fair opportunity to present their cases as determined by majority vote of the Board), the Chairperson will declare the record closed.

H. After the record is closed, and following closing arguments (if any), the Board may close the hearing for purposes of conducting deliberations in executive session. The Board may suspend deliberations to prepare a written Decision and reconvene in executive session on a later date to review and finalize the Decision; provided, however, that the vote to adopt the Decision must be conducted in open session.

#### **4-8-050 - Rendering the Decision.**

- A. After due consideration, the Civil Service Board will render its Decision within thirty (30) calendar days of the conclusion of the hearing.. The written Decision shall be delivered to the Clerk of the Board, who shall be its custodian, and who shall serve copies on all parties within two workdays. The Clerk may serve copies of the Decision via U.S. Mail, electronic mail, or any other reliable method of delivery.
- B. In deliberating upon and reaching its Decision, the Board shall apply a "preponderance of the evidence" standard. This standard is met as to a particular allegation or charge if the evidence supports a determination that the allegation or charge is more likely to be true than not.



- C. In rendering its Decision, the Board may affirm, reverse, or modify the action of the Department. Except as provided below, such Decision by the Civil Service Board shall be final.
- D. Alternatively, the Board may remand the matter to the Department for reconsideration in light of any specific facts or circumstances identified by the Board in its Decision as the grounds or reason(s) for the remand. In the event of such a remand:
1. The Department shall have five (5) workdays from remand, or such additional time as the parties may agree or the Board for good cause may allow in which to reconsider the Adverse Action and notify in writing the Appellant and the Board, through the Clerk, of the result of such reconsideration. Upon reconsideration, the Department may, within its discretion, withdraw, modify, or sustain the Adverse Action.
  2. The Appellant shall have three (3) workdays from the Department's notice, or such additional time as the parties may agree or the Board for good cause may allow in which to notify in writing the Department and the Board, through the Clerk, of whether he/she accepts the result of the Department's reconsideration of the Adverse Action.
  3. In the event the Appellant does not accept the result of the Department's reconsideration, the Board shall meet within fifteen (15) calendar days to return to executive session and resume deliberations on whether to affirm, reverse, or modify the Adverse Action of the Department (whether or not said Adverse Action was modified on remand) as provided in Subsection A above. The Board may, but need not, entertain additional argument from the parties or their legal representatives but shall not, absent exceptional circumstances, reopen the Appeal Hearing.
  4. The Clerk of the Civil Service Board shall ensure that any meeting held in accordance with Subsection D(3) of this Section is conducted in accordance with the requirements of the Georgia Open Meetings Act, including those pertaining to notice, agenda, and minutes.
- E. Notwithstanding the foregoing, non-compliance with any deadline set forth in Subsections A and D(3) of this Section shall have no effect on the Adverse Action under appeal or compromise the Department's right to present evidence and argument in support of the Adverse Action or to otherwise oppose the Appeal.

#### **4-8-060 - Request for Continuance of Appeal Hearing or Stay of Proceedings.**

A continuance of an Appeal Hearing may be granted by the Civil Service Board under the following circumstances:

1. A written request signed by both the Appellant and the Department or their respective legal representatives verifying their agreement to the continuance is received by the Clerk to the Civil Service Board prior to the hearing;

2. In the absence of an agreement, the requesting party shows good cause in writing for such continuance and the written request is received by the Clerk and by the other party prior to the Appeal Hearing; or
  3. On its own motion if a quorum of the Civil Service Board is unavailable or for any similarly compelling reason.
- B. If a continuance is granted, the Civil Service Board will reschedule the date, time and place of the Appeal Hearing and the Clerk of the Board shall promptly notify all parties of same. The continuance should be for no longer than thirty (30) days from the initial date of the Appeal Hearing; provided, however, that non-compliance with this deadline shall have no effect on the Adverse Action under appeal or compromise the Department's right to present evidence and argument in support of the Adverse Action or to otherwise oppose the Appeal.
- C. A second continuance will only be granted for exceptional circumstances, such as where the need for the continuance could not have been reasonably anticipated by, or is beyond the control of, the requesting party. Where the second continuance is requested by the Appellant and both the Civil Service Board and the Department are ready, willing, and able to proceed with the Appeal Hearing as scheduled, the Board may condition granting the second continuance on the Appellant's stipulation that the accrual of his/her backpay is tolled from that point forward.
- D. Any request for continuance, whether or not agreed upon by the parties or opposed, shall be reviewed by the Civil Service Board in accordance with the considerations described in Section 4-8-030C(2) of the Civil Service Rules and Regulations.
- E. The Civil Service Board shall have the authority and discretion to grant a stay of proceedings of up to thirty (30) days for good cause shown (e.g., to allow the parties to attempt to negotiate a compromise resolution of the Appeal). A stay may be granted under the same circumstances as a continuance as set forth in Subsections A(1), A(2), and A(3) of this Section.

#### **4-8-070 - Training.**

- A. The Director of Human Resources and Risk Management shall prepare an appropriate two (2) hour orientation program to be presented to each Civil Service Board member within the first twelve (12) months of his/her appointment. This orientation program shall be considered training for purposes of Section 4.15(g) of the City Charter.
- B. The Director of Human Resources and Risk Management and/or the Attorney for the Civil Service Board, or their respective designees, shall provide, or make the necessary arrangements for, all members of the Board to receive a minimum of two (2) hours of training per year on hearing procedures and/or any other area(s) determined in accordance with Section 4.15(g) of the City Charter.
- C. The Clerk of the Civil Service Board shall ensure that the training is conducted in accordance with the requirements of the Georgia Open Meetings Act, including those pertaining to notice, agenda, and minutes.

#### 4-8-080 - Legal Assistance.

The Civil Service Board shall recommend to the City Council the name of an attorney with employment law experience to provide legal assistance to the Civil Service Board. The Council may appoint the attorney recommended by the Civil Service Board, if any, or some other attorney deemed qualified by the Council to hold such position. The appointed attorney shall serve at the pleasure of the City Council and may be removed from this appointment by the Council. The appointed attorney shall attend all meetings and hearings of the Civil Service Board as directed.

#### 4-8-085 – Miscellaneous Considerations.

- A. Ex parte communications with members of the Civil Service Board concerning the subject matter of an Appeal are prohibited.
- B. In presiding over any meeting, hearing or other proceedings of the Civil Service Board, the Chairperson shall preserve order and decorum and, if necessary, shall take any lawful steps he/she reasonably deems warranted or appropriate to resolve any disruption, interference, or other factor impeding the purpose or undermining the integrity of the civil service process.

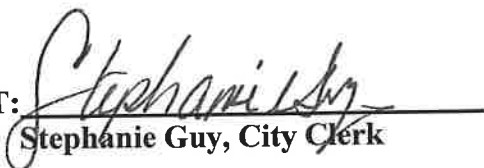
Section 2: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 3: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: April 13, 2022

APPROVED:   
R. Steve Tumlin, Jr., Mayor

ATTEST:   
Stephanie Guy, City Clerk

Approved as to Form:   
Douglas R. Haynie, City Attorney